WP(C) 7967/2005
BEFORE
HON'BLE JUSTICE MR I. A. ANSARI
IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM & ARUNA CHAL PRADESH)

1. WP(C) No.7967/2005

1. Rungpur Enterprises
A partnership firm registered under the provisions of the Indian Partnership Act , 1932 and having its principal place of business at Bishnu Market, Guwahati, re presented by one of its partner Shri Rajesh Kumar Agarwalla, Resident of B ishnu Market, AT Road, Guwahati-781001, Kamrup, Assam.

2. Ganesh Metcoke Industries
A partnership firm registered under the provisions of the Indian Partnership Act , 1932 and having its principal place of business at 5F, Electronic Centre, 1/1A , Princep Street, Kolkata-700 072 and one of its offices at Village Hathkuwapara , Azara, Guwahati in the district of Kamrup, Assam, represented by Shri Moolcha nd Patni, Resident of Princep Street, Kolkata, West Bengal
& Petitioners.

- Versus -

1. The State of Assam, represented by the Commissioner & Secretary to the G ovt. of Assam, Department of Town and Country Planning, Dispur, Guwahati.

2. Guwahati Metropolitan Development Authority
An authority constituted under the provisions of the Guwahati Metropolitan Devel opment Authority Act, 1985 and having its office at Bhangagarh, Guwahati-781005.

3. The Chief Executive Officer,
Guwahati Metropolitan Development Authority
Bhangagarh, Guwahati-781005

4. The Town Planner,
Guwahati Metropolitan Development Authority
Bhangagarh, Guwahati-781005

& Respondents.

For the petitioners : Mr. N. Dutta, Senior Advocate,
Dr. A. K. Saraf, Senior Advocate,
Mr. D. Baruah, Advocate,
Ms. N. Hawelia,
Ms. M. L. Gope.
For the respondents : Ms. B. L. Sinha, Government Advocate,
Ms. M. Hazarika, Senior Advocate,
Mr. S. Baruah, Advocate.

2. WP(C) No. 8704/2005

1. Rungpur Enterprises
A partnership firm registered under the provisions of the Indian Partnership Act

, 1932 and having its principal place of business at Bishnu Market, Guwahati, re presented by one of its partner Shri Rajesh Kumar Agarwalla, Resident of Bishnu Market, AT Road, Guwahati-781001, Kamrup, Assam.

2. Ganesh Metcoke Industries
A partnership firm registered under the provisions of the Indian Partnership Act , 1932 and having its principal place of business at 5F, Electronic Centre, 1/1A , Princep Street, Kolkata-700 072 and one of its offices at Village Hathkuwapara , Azara, Guwahati in the district of Kamrup, Assam, represented by Shri Moolcha nd Patni, Resident of Princep Street, Kolkata, West Bengal.

&

Petitioners.

- Versus -

1. The State of Assam, represented by the Commissioner & Secretary to the G ovt. of Assam, Department of Town and Country Planning, Dispur, Guwahati.

2. Guwahati Metropolitan Development Authority
An authority constituted under the provisions of the Guwahati Metropolitan Devel opment Authority Act, 1985 and having its office at Bhangagarh, Guwahati-781005.

3. The Chief Executive Officer,
Guwahati Metropolitan Development Authority
Bhangagarh, Guwahati-781005

4. The Town Planner,
Guwahati Metropolitan Development Authority
Bhangagarh, Guwahati-781005
& Respondents.

For the petitioners : Mr. N. Dutta, Senior Advocate,
Dr. A. K. Saraf, Senior Advocate,
Mr. D. Baruah, Advocate,
Ms. N. Hawelia,
Ms. M. L. Gope.

For the respondents : Ms. B. L. Sinha, Government Advocate,
Ms. M. Hazarika, Senior Advocate,
Mr. S. Baruah, Advocate.

3. WP(C) 8216/2005

1. Ganesh Metcoke Industries
A partnership firm registered under the provisions of the Indian Partnership Act , 1932 and having its principal place of business at 5F, Electronic Centre, 1/1A , Princep Street, Kolkata-700 072 and one of its offices at Village Hathkuwapara , Azara, Guwahati in the district of Kamrup, Assam, represented by Shri Moolcha nd Patni, Resident of Princep Street, Kolkata, West Bengal.

& Petit

ioners.

- versus -

1. The State of Assam, represented by Commissioner & Secretary to the Govt. of Assam, Department of Industries & Commerce, Dispur, Guwahati-781006.

2. The Joint Secretary, to the Govt of Assam, Industries & Commerce Departm

ent, Dispur, Guwahati - 781006.

3. The Director, Industries & Commerce Department, Dispur, Guwahati - 78102 1.

4. The General Manager,
District Industries & Commerce Centre,
Kamrup, Guwahati-781021
& Respondents.

For the petitioners : Mr. N. Dutta, Senior Advocate,
Dr. A. K. Saraf, Senior Advocate,
Mr. D. Baruah, Advocate,
Ms. N. Hawelia,
Ms. M. L. Gope.

For the respondents : Ms. B. L. Sinha, Government Advocate,
Ms. M. Hazarika, Senior Advocate,
Mr. S. Baruah, Advocate.

4. WP(C) 8228/2005

Shri Balaji Coke Industries
A partnership firm registered under the provisions of the Indian Partnership Act , 1932 and having its principal place of business at 5C, Electronic Centre, 1/1A , Princep Street, Kolkata-700 072 and one of its offices at Village Hathkuwapara , Azara, Guwahati in the district of Kamrup, Assam, represented by Shri Arobind o Kumar Saha, the power of attorney holder of the petitioner firm and a resident of Hatigaon, Guwahati.
& Petitioner.

- Versus -

1 The State of Assam,
represented by Commissioner & Secretary to the Govt. of Assam, Department of Ind ustries & Commerce, Dispur, Guwahati-781006.

2. The Joint Secretary, to the Govt. of Assam, Industries & Commerce Depart ment, Dispur, Guwahati - 781006.

3. The Director, Industries & Commerce Department, Dispur, Guwahati - 78102 1.

4. The General Manager,
District Industries & Commerce Centre,
Kamrup, Guwahati-781021
&Respondents.

For the petitioners : Mr. N. Dutta, Senior Advocate,
Dr. A. K. Saraf, Senior Advocate,
Mr. D. Baruah, Advocate,
Ms. N. Hawelia,
Ms. M. L. Gope.

For the respondents : Ms. B. L. Sinha, Government Advocate,
Ms. M. Hazarika, Senior Advocate,
Mr. S. Baruah, Advocate.

5. WP(C) 142/2006

Ganesh Metcoke Industries
A partnership firm registered under the provisions of the Indian Partnership Act , 1932 and having its principal place of business at 5F, Electronic Centre, 1/1A , Princep Street, Kolkata-700 072 and one of its offices at Village Hathkuwapara , Azara, Guwahati in the district of Kamrup, Assam, represented by Shri Moolcha nd Patni, Resident of Princep Street, Kolkata, West Bengal.

& Petitioner.

- Versus -

1. The State of Assam,
represented by the Commissioner & Secretary to the Govt. of Assam, Department of Environment and Forest, Dispur, Guwahati-781 006.

2. The Pollution Control Board, Assam,
A Board constituted under the provisions of Section 4(1) of the Water (Preventio n and Control of Pollution) Act, 1974, having its head office at Bamunimaidam, G uwahati-781 021.

3. The Chairman,
Pollution Control Board, Assam,
Bamunimaidam, Guwahati-781 021.
& Respondents.

For the petitioners : Mr. N. Dutta, Senior Advocate,
Dr. A. K. Saraf, Senior Advocate,
Mr. D. Baruah, Advocate,
Ms. N. Hawelia,
Ms. M. L. Gope.

For the respondents : Ms. B. L. Sinha, Government Advocate,
Ms. M. Hazarika, Senior Advocate,
Mr. B. C. Das, Senior Advocate,
Mr. S. Baruah, Advocate.

6. WP(C) 145/2006

Shri Balaji Coke Industries
A partnership firm registered under the provisions of the Indian Partnership Act , 1932 and having its principal place of business at 5C, Electronic Centre, 1/1A , Princep Street, Kolkata-700 072 and one of its offices at Village Hathkuwapara , Azara, Guwahati in the district of Kamrup, Assam, represented by Shri Arobind o Kumar Saha, the power of attorney holder of the petitioner firm and a resident of Hatigaon, Guwahati.
& Petitioner.

- Versus -

1. The State of Assam, represented by the Commissioner & Secretary to the G ovt. of Assam, Department of Environment and Forest, Dispur, Guwahati-781 006.

2. The Pollution Control Board, Assam,

A Board constituted under the provisions of Section 4(1) of the Water (Preventio n and Control of Pollution) Act, 1974, having its head office at Bamunimaidam, G uwahati-781 021.

3. The Chairman,
Pollution Control Board, Assam,
Bamunimaidam, Guwahati-781 021.
& Respondents.

For the petitioners : Mr. N. Dutta, Senior Advocate,
Dr. A. K. Saraf, Senior Advocate,
Mr. D. Baruah, Advocate,
Ms. N. Hawelia,
Ms. M. L. Gope.

For the respondents : Ms. B. L. Sinha, Government Advocate,
Ms. M. Hazarika, Senior Advocate,
Mr. B. C. Das, Senior Advocate,
Mr. S. Baruah, Advocate.

7. WP(C) 7465/2005

1. Coke Udyog Pratirodh Samitee,
Ramsarani Mouza, Azara, Guwahati-781017.
2. Hafiz Ahmed
S/o. late Mofizuddin Ahmed,
Village- Hathkhowapara, Azara
Ramsarani Mouza, PO&PS.Azara,
Dist.Kamrup, Assam, Pin-781017

3. Md. Saheb Ali
S/o. Md.Marfad Ali
Village- Hathkhowapara, Azara
Ramsarani Mouza, PO&PS.Azara,
Dist.Kamrup, Assam, Pin-781017
& Petitioners.

- Versus -

1. Union of India,
Represented by the Secretary to the Govt. of India,
Ministry of Environment and Forests,
Paryavaran Bhawan, CGC Complex, Lodhi Road,
New Delhi - 110003.
2. Central Pollution Control Board
Represented by its Member-Secretary,
Parivash Bhawan, CBD-cum-Office Complex,
East Arjun Nagar,
Delhi - 110032.
3. State of Assam,
Represented by the Commissioner & Secretary to the
Government of Assam,
Forest, Ecology and Environment Department,
Assam Secretariat, Dispur,
Guwahati - 6.
4. Assam Pollution Control Board,
Represented by its Member Secretary,
Bamunimaidan, Guwahati - 21.

5. Deputy Commissioner, Kamrup (M),
Guwahati.
6. Guwahati Metropolitan Development Authority,
Represented by the Chief Executive Officer,
Bhangagarh, Guwahati - 5.
7. Sri Arvind Kr Saha, Proprietor,
Sri Balaji Coke Industries, Azara,
Kamrup, Assam.
8. Sri Moolchand Patni, Proprietor,
Ganesh Met Coke Industries,
Azara, Kamrup, Assam.
& Respondents.

For the petitioners : Mr. B. Choudhury, Advocate.

For the respondents : Ms. B. L. Sinha, Government Advocate,
Mr. N. Dutta, Senior Advocate,
Dr. A. K. Saraf, Senior Advocate,
Mr. D. Baruah, Advocate,
Ms. M. Hazarika, Senior Advocate,
Mr. B. C. Das, Senior Advocate,
Mr. S. Baruah, Advocate.
Ms. A. Ajitsaria, Advocate,
Ms. A. Senapati, Advocate.

BEFORE
THE HON'BLE MR. JUSTICE I A ANSARI

Dates of hearing : 13.04.2007, 07.05.07, 08.05.2007, 09.05.2007,
10.05.2007 & 19.07.2007.

Date of judgment : 24.07.2007.

JUDGMENT AND ORDER

By this common judgment and order, I propose to dispose of this set of writ petitions, for, all these writ petitions, on the request made by the learned counsel for the parties, have been heard together inasmuch as all these writ petitions are inextricably linked with each other and the disposal of any of these writ petitions would have a bearing on the outcome of the remaining writ petitions.

2. I have heard Mr. N. Dutta, learned Senior counsel, appearing on behalf of the petitioners, in WP(C) No. 7969/2005, WP(C) No. 8216/2005, WP(C) No. 8704/2005, WP(C) No. 8228/2005, WP(C) No. 142/2005, and WP(C) No. 145/2005, and Mr. B. Choudhury, learned counsel, appearing on behalf of the petitioner in WP(C) No. 7465/2005 (Coke Udyog Pratirodh Samitee and Ors. Vs. Union of India and Ors.). I have also heard Ms. M. Hazarika, learned Senior counsel, appearing on behalf of the Guwahati Metropolitan Development Authority and its authorities, Ms. B. L. Sinha, learned Government Advocate, appearing on behalf of the State respondents, and Mr. S. Baruah, learned counsel, appearing on behalf of the Assam Pollution Control Board and its authorities.

3. Before I come to the merit of each of the writ petitions, let me set out hereinbelow, in brief, the material facts, which have given rise to the writ petitions:

(i) The Government of India had announced, on 24.12.97, an industria

l policy for upliftment and growth of industries in the north-eastern region of India. By several notifications, issued by the Department of Revenue, Governmen t of India, various packages for central excise exemption were accordingly promi sed, a Notification, dated 09.07.99, being one of such notifications. By virtue of a Notification, dated 12.02.02, issued by the Department of Revenue, Governm ent of India, some places, including those places, which fell within the territ orial limits of the Guwahati Metropolitan Development Authority (in short, 'GMD A'), were notified as industrial area.

(ii) M/s Rungpur Enterprise, a partnership firm, owned some plots of land wit hin the industrial area, which fell under the GMDA. M/s Rongpur Enterprise ente red into an agreement, on 27.09.04, for sale of a plot of its land, located with in the industrial area, in favour of M/s Ganesh Metcoke Industries, a partnershi p firm. M/s Rungpur Enterprise entered into yet another agreement, executed on t he same day, i.e. 27.09.04, for sale of the rest of its said plots of land in fa vour of M/s Shri Balaji Coke Industries, a partnership firm. The Circle Officer, Palashbari Revenue Circle, Mirza, issued a certificate, dated 09.12.94, to the effect that the plots of land, which were covered by the said two agreements for sale, fell within the industrial area covered by the Notification, dated 12.02. 02, aforementioned. M/s Ganesh Metcoke Industries as well as M/s Shri Balaji Co ke Industries were granted provisional registration, on 16.11.04, as small scale industries, by the Directorate of Industries, Government of Assam. This apart, M/s Shri Balaji Coke Industries was granted, on 02.12.04, a provisional 'No Obj ection Certificate' by the Assam Pollution Control Board and M/s Ganesh Metcoke Industries was granted a provisional 'No Objection Certificate' by the by the sa id Board on 03.12.04.

(iii) However, a communication was issued, on 16.05.05, by the Joint Secretary to the Government of Assam, Department of Industries and Commerce, addressed to the General Managers, District Industries and Commerce Centers, all over Assam, requesting them not to issue temporary/permanent registration for setting up of Coke Industries for the time being until further instructions from the Governme nt. By this communication, dated 16.05.05, the authorities concerned were also requested not to allow those persons, who had obtained licence for setting up of Coke Industries, but had not started operation, to commence their production.

(iv) The proposed factory of M/s Shri Balaji Coke Industries was, on 04.08.05 , registered under the Factories Act, 1948, and a license was accordingly issued . The proposed factory of M/s Ganesh Metcoke Industries was, however, registere d, on 08.08.05, under the Factories Act, 1948, and license was issued accordingl y. Requisite permission for sale of land, as had been sought for by M/s Rungpur Enterprise, was granted to them by the Deputy Commissioner, Guwahati, on 25.08 .05.

(v) Thereafter, a notice, under Section 87 of Town Planner, GMDA, was issued to M/s Shri Jagdish Kumar Agarwal, describing him as proprietor of M/s Rungpur Enterprise, to stop construction and show cause, within ten days, as to why thei r unapproved construction should not be demolished. Responding to this notice, dated 07.09.05, Sri Jagdish Kumar Agarwal replied by stating, inter alia, that t hey had prior permission to set up a stone crusher, boundary wall, shed, etc. an d a red brick manufacturing unit, which is in existence, and that what was being done by M/s Rungpur Enterprise was renovation of the old existing boundary wall s, because they propose to set up a Coke Industry within the area of M/s Rungpur Brick Industries. By their reply, M/s Rungpur Enterprise also informed the Tow n planner, GMDA, that on receipt of the said show cause notice, the construction work had been stopped and that the violation had occurred due to lack of proper guidance and that necessary application for setting up the plant would be submi tted with relevant papers for approval.

(vi) The reply, so given by M/s Rungpur Enterprise, was followed by a notice, dated 22.09.05, issued by the Town Planner, GMDA, directing M/s Rungpur Enterpr ise to submit documents in support of existing permission and approved drawings for setting up of stone crusher, boundary walls, etc. By its letter, dated 29.0 7.05, M/s Rungpur Enterprise submitted their reply with some documents to the To wn Planner, GMDA. As required under the provisions of Section 28 read with Sect

ions 30 and 32 of the Guwahati Metropolitan Development Act, 1985, M/s Rungpur E nterprise made, on 15.10.05, addressed to the GMDA, two applications, in prescri bed format, seeking permission to sell its land, in terms of the said agreements for sale, in favour of M/s Ganesh Met Coke Industries and M/s Shri Balaji Coke Industries. It was at this stage that WP(C) No. 7465/2005 came to be instituted .

WP(C) No.7465/2005

(a) This writ petition (WP(C) No. 7465/2005) has been instituted in the name of Coke Udyog Protirodh Samiti, which is claimed to be a common platfor m of people of about twenty villages of Ramsarani Circle to voice their concern and grievances with regard to the establishment of coke plants. The basic griev ance and allegation of the petitioners, in this writ petition, is that the estab lishment of coke industries would adversely affect the life of the people, who r eside in the vicinity of the coke industries, because of the pollution, which su ch industries would cause, and that the Pollution Control Board had not been tak ing interest in the matter despite representations made, in this regard, by the people of the locality concerned.

(b) By this writ petition, the petitioners have sought for, inter alia, dire ction to the State respondents to close the two coke industries on the ground th at the coke industry is hazardous to the environment and for the lives of the pe ople, who live in the vicinity of the said area.

(c) The Court, while issuing notice of motion in the writ petition, directed the Assam Pollution Control Board (in short, 'the APCB)' to take necessary acti on in accordance with law and submit report by 09.11.05. The APCB submitted its report, in this writ petition, on 16.11.05. According to the report, so submit ted, the APCB had granted No Objection Certificate 'provisionally' for establish ment of the coke industries; but so far as the operation of the industries is co ncerned, it would be decided in due course in accordance with law.

(d) So far as the private respondents, in this writ petition, name ly, M/s Ganesh Met Coke Industries and M/s Shri Balaji Coke Industries are conce rned, their claim is that the writ petition is a motivated move by the owners of those coke industries, which are already in operation, and they do not want new coke industries to come up and create competition in the market.

(vii) Till the time WP(C) No. 7465/2005 aforementioned was instituted, no orde r was passed by the GMDA on the applications made by M/s Rungpur Enterprise for sale of its land to M/s Shri Balaji Coke Industries and M/s Ganesh Metcoke Indus tries and also on the applications made by M/s Shri Balaji Coke Industries and M /s Ganesh Metcoke Industries seeking permission for construction. When WP(C) N o.7465/2005 was still pending and before the APCB submitted its report, as direc ted, the Chief Executive Officer, GMDA, informed M/s Rungpur Enter prise, by a communication, dated 05.11.2005, that permission for sale of land co uld not be considered on the ground that by a communication, dated 16.05.05, afo rementioned, Joint Secretary to the Government of Assam, Industries and Commerce Department had (as already mentioned above), directed all the General Managers of District Industries & Commerce Centre, not to issue temporary/permanent regis tration for setting up of coke industries until further instruction from the Gov ernment is received. No copy of the said communication, dated 05.11.05, whereby the permission had been declined by the GMDA, was, however, made over to M/s Ga nesh Metcoke Industries and M/s Shri Balaji Coke Industries. By yet another com munication, dated 07.11.05, Town Planner, GMDA, declined to give permission for construction, as had been sought for, on two grounds, namely, (i) that M/s Shri Balaji Coke Industries and M/s Ganesh Metcoke Industries did not have title to t he land and (ii) that no 'No Objection Certificate' can be granted in view of th e communication, dated 16.05.05, aforementioned issued by the Directorate of Ind ustries, Government of Assam, till the Government directs otherwise.

(viii) When the communications, dated 05.11.05 and 07.11.05, aforementioned, de clining thereby permission for sale of land and permission for construction (as had been sought for) were received, M/s Rungpur Enterprise, M/s Ganesh Metcoke I

ndustries and M/s Shri Balaji Coke Industries instituted two writ petitions, nam ely, WP(C) No. 7967/2005 and WP(C) No. 8704/2005. While WP(C) No. 7967/2005 has been instituted by M/s Rungpur Enterprise and M/s Ganesh Met Coke Industries as petitioner Nos. 1 and 2 respectively, WP(C) No. 8704/2005 has been instituted b y M/s Rungpur Enterprise and M/s Shri Balaji Coke Industries as petitioner Nos. 1 and 2 respectively. The cases of the parties to these writ petitions are, in brief, as under:

WP(C) No. 7967/2005 and WP(C) No. 8704/2005

(a) In these two writ petitions, the basic grievances of the writ petitioner s are that the refusal to grant permission for sale of land on the basis of the communication, dated 16.05.05, aforementioned, issued by the Joint Secretary, Go vernment of Assam, Industries and Commerce Department, is absolutely illegal ina smuch as the said communication is an internal communication meant for the Indus tries Department and such a communication could not have legally formed the basi s for declining permission to sell a land inasmuch as the said communication is not binding on the GMDA, which has to function within the parameters of the stat ute, whereunder it is born and other statutes relevant thereto. This apart, the re is, according to these writ petitioners, no government policy or decision ban ning setting up of coke industry and until such a decision is taken by the Gover nment, no such communication can be made a basis for rejection of permission to either sell a plot of land or raise and establish a coke industry. The GMDA is, according to the petitioners in these two writ petitions, a statutory body esta blished under the GMDA Act and it has to function, in terms of the provisions of the GMDA Act, for the purpose of execution and enforcement of its master plan a nd it has no authority or jurisdiction to make the said communication, dated 16. 05.2005, a basis for rejection, or non-consideration, of the permission sought f or by the petitioners.
(b) While resisting the two writ petitions, the GMDA and its authorities hav e filed their affidavit, wherein they have contended, inter alia, that apart fr om the said communication, dated 16.05.05, aforementioned, which had become the basis for rejection, coke factories cannot be allowed to be set up for three add itional reasons, namely, (i) the area, where the coke factories are sought t o be set up by the petitioners, fall within the Light Industrial Zone as per the Master Plan and Zoning Regulations for Guwahati and that in the Light Industria l Zone, coke industry cannot, in terms of the Zoning Regulations and Master Plan , be permitted to be set up, for, coke industry does not fall under Light Indus tries and (ii) in terms of Clause 37A(f) of the Zoning Regulations, the maximum height of a building shall be subject to such heights, as may be prescribed by t he Civil Aviation authorities, from time to time and as the area, where the coke factories are sought to be set up by the petitioners, fall within the vicinity of Borjhar Airport, 'No Objection Certificate' from appropriate authority shall be submitted by the petitioners for the purpose of obtaining permission for sale and/or construction of building in order to set up a coke factory.
(ix) Besides the said two writ petitions, namely, WP(C) Nos. 7967/2005 and 87 04/2005, M/s Ganesh Metcoke Industries and M/s Shri Balaji Coke Industries have instituted two more writ petitions, namely, WP(C) Nos. 8216/2005 and 8228/2005. While WP(C) No. 8216/05 has been instituted by M/s Ganesh Met Coke Industries, WP(C) No. 8228/05 has been instituted by M/s Shri Balaji Coke Industries. The ca ses of the parties to these writ petitions are, briefly stated, as under:

WP(C) Nos. 8216/2005 and 8228/2005
(a) In these two writ petitions, the basic challenge is posed to the communi cation, dated 16.05.05, whereby the Joint Secretary, Government of Assam, Indust ries and Commerce Department, has directed all the General Managers of the Distr ict Industries and Commerce Centre, not to issue temporary/permanent registratio n certificate for establishment of coke industries and further directing the lat er not to allow coke industries, which have obtained license but have not starte

d operating, to commence their operation. It may be noted that it was based on the said communication, dated 16.05.2005, that permission for sale and construction had been declined by the GMDA.

(b) In WP(C) Nos. 8216/2005 and WP(C) No. 8228/2005 aforementioned, the State Government and the Department of Industries, Government of Assam, have chosen not to file any affidavit and it has been conceded by Mr. P. K. Moshahary, learned Senior Government Advocate, that there is no policy decision taken by the State Government or the Department of Industries not to allow setting up of coke industries either within the area of GMDA or in any other area. Apart from the fact that there is, admittedly, no policy decision of the Government for not allowing coke industries to be either established or operated within the area of the GMDA or beyond, the petitioners contend that the State cannot ban setting up of an industry without assigning any reason and if no reason is assigned or can be assigned, as in the present case, then, such action of the State cannot but be regarded as illegal, arbitrary and irrational and such action needs to be interfered with.

(x) M/s Ganesh Met Coke Industries and M/s Shri Balaji Coke Industries have instituted two more writ petitions, which have given rise to WP(C) No. 142/2005 and WP(C) No. 145/2006. While WP(C) No. 142/2005 has been instituted by M/s Ganesh Met Coke Industries, WP(C) No. 145/2005 has been instituted by M/s Shri Balaji Coke Industries. The parties to these writ petitions have set up their respective cases as under:

WP(C) No. 142/2005 and WP(C) No. 145/2005

(a) By hand-written letters, dated 13.12.2005 and without bearing any Memo number, the Chairman, Assam Pollution Control Board, directed both M/s Shri Balaji Coke Industries and M/s Ganesh Metcoke Industries to, immediately, stop all construction activities in public interest until further order and that, in the meanwhile, an environment impact assessment would be made. The said two hand-written letters were followed by two letters, bearing Memo numbers and the date as 13.12.2005, issued by the Chairman, Assam Pollution Control Board, repeating what had been written in the said two hand-written letters.

(b) The petitioners, in these two writ petitions, contend that the Chairman, APCB, has no jurisdiction to issue such communication on its own inasmuch as the APCB is a statutory body and any such directions, if any, can, at best, be issued by the statutory authority and not on the whims of its Chairman. The writ petitioners further contend that the APCB having granted 'No Objection Certificate', though provisional, cannot, unilaterally, direct the petitioners to stop all constructional activities inasmuch as the role of the APCB can, now, start, according to the writ petitioners, at the time, when the industry is required to be commissioned. When the 'No Objection Certificate' has been provisionally granted, the construction, contend the writ petitioners, cannot be stopped without giving any opportunity to the writ petitioners. The APCB and its authorities, such as, its Chairman, are bound to act fairly, reasonably and rationally and their actions cannot be so arbitrary and irrational as reflected by the hand-written communication, dated 13.12.05, aforementioned.

4. Let me, now, deal with the merit of the present writ petitions:

A. WP(C) 8216/2005 & WP(C) 8228 OF 2005

(i) In both these writ petitions, as already indicated above, the subject-matter of challenge is the communication, dated 16.05.2005, whereby respondent No. 2, namely, Joint Secretary to the Govt. of Assam, Industries and Commerce Department, had directed all the General Managers, District Industries and Commerce Centre, not to issue temporary/permanent Registration Certificate for establishment of coke industries and further directing the latter not to allow the coke industries, which had obtained license but had not started functioning, to commence operation. As the communication, dated 16.05.2005, aforementioned was made the reason by the GMDA to decline to give permission for sale of the land, in questio

n, in favour of M/s. Ganesh Metcoke and M/s. Balaji Coke Industries, the petitioners' claim that their right to obtain permission has been adversely affected by the said communication, dated 16.05.2005, and the grounds of challenge to the said communication, dated 16.05.2005, are that the State Government cannot impose any blanket ban on setting up of Coke Industries without assigning any reason, for, such blanket ban, which is not supported by any reason, is nothing but whimsical, arbitrary and unreasonable. It is also the case of the writ petitioners that when the other Coke Industries have been allowed to operate and survive, the direction, issued by the Department of Industries, Govt. of Assam, stopping setting up of Coke Industries without assigning any reason therefor is palpably discriminatory. Such an action of the Government, according to the writ petitioners, is a violation of the guarantee contained under Article 14 of the Constitution of India. Yet another ground for posing challenge to the said communication is that the GMDA, being a statutory body and being an authority, which has to act in terms of the provisions and scheme of the GMDA Act, 1985, cannot deny permission for sale of the land or construction of a building merely on the basis of a communication, such as, the communication, dated 16.05.2005, aforementioned, which is nothing, but an internal communication, meant for the Department of Industries, Govt. of Assam. Such a communication, as the communication, dated 16.05.2005, is, the GMDA could not have, contend the writ petitioners, declined to issue permission, which had been sought for by the writ petitioners.

(ii) While considering these two writ petitions, what needs to be noted is that the State respondents have not filed their counter-affidavit in the present cases. This apart, on 10.01.2006, Mr. PK Musahary, learned Senior Govt. Advocate, informed this Court that there is no policy-decision by the Government banning setting up of coke industry. Further-more, despite repeated opportunities given, the respondents have not, as already indicated hereinbefore, filed any affidavit to sustain their communication, dated 16.05.2005, aforementioned. In fact, Mr. Musahary has further submitted that despite repeated requests made by him, State respondents, particularly, Department of Industries, Govt. of Assam, have provided no instructions and that he has no submission to make on the legality or otherwise of the communication, dated 16.05.2005, aforementioned.

(iii) In view of the fact that there is, admittedly, no decision or policy of the State Government not to allow setting up of coke industries, a blanket ban, which the communication, dated 16.05.2005, aforementioned, imposed, on the setting up of coke industries, cannot but be regarded as arbitrary, particularly, when neither the authority, which issued the communication, nor the Department concerned have assigned any reason to support the said communication. Mr. N. Dutta, learned Senior counsel, has, therefore, considerable force, when he submits that as the said communication has not been issued pursuant to any Government decision or decision of the Industries Department, Govt. of Assam, and/or is not supported by any reasons whatsoever, this communication is nothing, but arbitrary and whimsical. Situated thus, this Court has no option, but to hold that the communication, dated 16.05.2005, being wholly arbitrary, is violative of Article 14 and cannot be allowed to survive.

(iv) I may pause here to point out that in Kumari Shrilekha Vidyarthi and Others vs. State of U.P. and Others, reported in (1991) 1 SCC 212, the Supreme Court held as follows:

> 36. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is humour, whims o

r caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you'. This is what men in power must remember, always.

(v) In the case at hand, as already discussed above, the impugned notification, dated 16.05.05, aforementioned, shows no reason whatsoever for issuing such communication, particularly, when there was no direction, in this regard, by the Government. This apart, no reason for issuing such a communication is discernible from the materials on record.

(vi) Because of what have been discussed and pointed out above, there can be no escape from the conclusion, and I do conclude, that the communication, dated 16.05.05, aforementioned, is wholly arbitrary and violative of Article 14 and cannot, therefore, be allowed to survive good on record.

5. The question, which, now, remains to be answered is as to what bearing the conclusion of this Court that the communication, dated 16.05.2005, aforementioned, is arbitrary would have on the remaining writ petitions, particularly, WP(C) Nos. 7967/2005 and 8704/2005?

6. Let me, therefore, turn to the merit of WP(C) Nos.7967/2005 and 8704/2005 aforementioned.

B. WP(C) 7967/2005 & 8704/2005

(i) As has already indicated above, these two writ petitions impugn the communication, dated 05.11.2005, issued by the respondent No.3, namely, Chief Executive Officer, GMDA, informing the petitioner No.1, namely, Rungpur Enterprise, that the permission for sale of the land could not be considered in view of the communication, dated 16.05.2005, aforementioned. In these two writ petitions, the communication, dated 07.11.2005, issued by the respondent No.4, namely, Town Planner, GMDA, also stand challenged, for, by this communication, respondent No.4 has declined to grant permission to construct, as already pointed out, for two reasons, namely, (i) that the petitioner No.2 does not have title to the land, in question, and (ii) that no 'No Objection Certificate' can be granted in view of the communication, dated 16.05.2005, until the matter is disposed of by the Government. It may, however, be noted that while the communication issued by the respondent No.4 addressed to Ganesh Metcoke Industries is dated 07.11.2005, similar communication issued by the respondent No.4 to Shri Balaji Coke Industries is dated 30.11.2005. While Ganesh Metcoke Industries impugn the communication, dated 07.11.2005, aforementioned in WP(C) No.7967/2005, Shri Balaji Coke Industries impugn the communication, dated 30.11.2005, aforementioned in WP(C) No.8704/2005.

(ii) In view of the fact that I have already held that the communication, dated 16.05.2005, aforementioned is violative of Article 14 and cannot be sustained, the reliance placed by the respondent No.3, namely, Chief Executive Officer, GMDA, in its communication, dated 05.11.2005, aforementioned, declining to grant permission for sale of the land, cannot survive.

(iii) Turning to the communication, dated 07.11.2005, whereby respondent No.4, namely, Town Planner, GMDA, has declined to give permission to construct, it needs to be noted, if I may repeat, that two reasons were assigned for declining permission for construction by the respondent No.4, one of these two reasons being the communication, dated 16.05.2005, issued by the Department of Industries, Govt. of Assam. In view of the fact that I have already held that the communication, dated 16.05.2005, aforementioned, is not sustainable, one of the two grounds, assigned by the respondent No.4 for declining to grant permission for construction, fails. This brings me to the second reason assigned by the respondent No.4 for not granting permission for construction and the second reason is that the petitioner No.2, namely, Ganesh Metcoke Industries (in WP(C) No.7967/2005) and t

he petitioner No.2, namely, Shri Balaji Coke Industries, (in WP(C) No.8704/2005), do not have title to the land, in question. In view of the fact the communication, dated 05.11.2005, declining permission for sale of the land by the respondent No.3, namely, Chief Executive Officer, GMDA, has been held to be not sustainable, it logically follows that unless, otherwise, shown, the petitioner No.2, namely, Ganesh Metcoke Industries (in WP(C) No.7967/2005) and the petitioner No.2, namely, Shri Balaji Coke Industries (in WP(C) No.8704/2005) are entitled to receive permission for purchase of the land aforementioned. Since no other ground was assigned by the respondent No.4 for declining permission, it logically further follows that even the communication, dated 07.11.2005, issued by the respondent No.4, cannot be sustained. In short, the permission for construction, as had been sought for by the said two writ petitioners, cannot be declined unless they are debarred by law from raising such construction for reasons other than what the communication, dated 07.11.2005, aforementioned had assigned.

(iv) Coupled with the above, it is also pertinent to point out, as correctly submitted by the petitioners, that the role of the GMDA is to determine, if the permission, which M/s Ganesh Met Coke Industries and M/s Shri Balaji Coke Industries have sought for sale of the land and construction, are in contravention of the provisions of the relevant statutes, Master Plan and/ or Zonal Regulations. Consideration of any other factor will be treated as irrelevant or extraneous unless the law itself makes necessary for the GMDA to take such a factor into consideration, for, Section 25(4) of the Guwahati Metropolitan Development Authority Act, 1985, states, the Authority shall not refuse the permission except on the ground of contravention of the proposal contained in the plan or the Zonal Regulations & & & & . When the relevant statute itself warrants the GMDA not to refus the permission except on the ground of contravention of the proposal contained in the plan or Zonal Regulations, the GMDA could not have made the communication, dated 16.05.05, aforementioned, a basis for denying the permission, particularly, when the said communication was not meant for the GMDA, but was an internal communication for the Department of Industries.

(v) While considering the above aspect of the case, it needs to be pointed out here that in S.R. Venkataraman vs. Union of India & Ors, reported in (1979) 2 SCC 491, the Apex Court held as follows:

7. The principle which is applicable in such cases has thus been stated by Lord Esher, M.R. in The Queen on the Prosecution of Richard Westbrook V. The Vestry of St. Pancras:

If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion.

This view has been follows in Sadler v. Sheffield Corporation.

8. We are in agreement with this view. It is equally true that there will be an error of fact when a public body is promoted by a mistaken belief in the existence of a non-existing fact or circumstances. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things go, these may well be said to run into one another.

9. The influence of extraneous matter will be undoubted where the authority making the order has admitted their influence. It will therefore be a gross abuse of legal power to punish a person or destroy her service career in a manner not warranted by law by putting a rule which makes a useful provision for the premature retirement of a government servants only in the 'public interest', to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist must therefore be held to be infected with an abuse of power.

(vi) From the observations made above, it is clear that no authority and, more particularly, a statutory authority, can take into account any act, which is not necessary for it to consider in arriving at a decision. If such a factor is taken into account, the discretion exercised by such an authority would

not be sustainable in law.

(vii) In the present case too, the GMDA can refuse permission only on the ground of contravention of the proposal contained in the plan or Zonal Regulations. The GMDA's decision not to grant permission on the basis of the communication, dated 16.05.05, aforementioned, which in itself is not sustainable, cannot be said to be a sound exercise of jurisdiction. It is also necessary to point out that according to the undenied facts on record, the coke industries, which are sought to be set up, fall within industrial area, as classified by the GMDA under the GMDA Act, 1985. In such circumstances, the GMDA could not have denied permission as had been sought for by M/s Ganesh Met Coke Industries and M/s Shri Balaji Coke Industries, when no violation of the Master Plan or the Zonal Regulations was alleged.

(viii) What emerges from the above discussion is that the very basis for rejecting the permission for sale of the land and also the permission for construction become irrelevant following the failure, on the part of the State Government, to sustain the communication, dated 16.05.20005, aforementioned.

(ix) It may, now, be noted that the GMDA, in their affidavits, filed in these two writ petitions, have assigned some other grounds for rejecting the permission for sale of the land and also the permission for construction. While considering the sustainability of the communication issued by the GMDA declining to grant permission for sale of the land and/or permission for construction, it needs to be noted that since the grounds on which permissions were declined do not survive, the GMDA cannot assign any fresh reason for rejecting the request for such permission, when such reasons were not the grounds for declining the permission.

(x) A reference with regard to the above may be made to the Apex Court's decision in Commissioner of Police, Bombay vs. Gordhandas Bhanji (AIR 1952 SC 16), wherein it was observed as follows:

> Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public order made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

(xi) The position of law, laid down in Gordhandas Bhanji (supra), has been approved by a Constitution Bench in Mohinder Singh Gill & Another vs. The Chief Election Commissioner, New Delhi and Others, reported in (1978) 1SCC 405.

(xiii) It is, thus, clear that since the grounds, on which permission was declined, do not survive, the GMDA cannot legally assign any fresh reason to sustain its rejection of the request made for the permission by M/s Ganesh Met Coke Industries and M/s Shri Balaji Coke Industries.

(xiv) Be that as it may, both the parties, on the request made on behalf of the writ petitioners, have been heard even on the merit of the fresh grounds on which the rejection of the permission to sell and permission to construct are, now, attempted to be sustained by the GMDA.

(xv) It may, now, be also pointed out that in the light of the affidavits filed by the GMDA, there are altogether three additional grounds, which should disentitle the writ petitioners from receiving the permission, which they have sought for, these reasons being as under :

(a) The Coke Industries, which the petitioners plan to set up, fall within the Light Industrial Area as per the Master Plan and in the face of the Zoning Regulations, a Coke Industry cannot be allowed to operate in the Light Industrial Area;

(b) The industries, to be set up by the petitioners, are required to obtain prior No Objection Certificate from the Airport Authority of India Ltd before applying to the GMDA for permission for construction. Reliance, in support of this ground, is placed by the GMDA on the communication, dated 10.05.2005, issued by

the DGM (ATE) of the Airport Authority of India Ltd.
(c) The petitioners have illegally constructed a brick manufacturing unit and continued to construct the same without permission from the GMDA.

7. Though, already indicated above, the three grounds mentioned hereinabove were not reasons for passing of the orders impugned in the said two writ petitions, let me, now, consider the merit of each of the said three grounds.

8. As already indicated above, one of the grounds, which the GMDA, now, assigns, is that the area, where the petitioners seek to set up their coke industries, fall in the Light Industrial Area as per the Master Plan and, in terms of the Zoning Regulations, a coke industry cannot operate in the Light Industrial Area.

9. While considering the above ground, what is imperative to note is that according to the Master Plan of the Guwahati Metropolitan Development Authority, the Industrial Area has been divided into three categories, namely, (i) Light Industrial Area; (ii) Medium Industrial Area; and (iii) Heavy Industrial Area. However, a scrutiny of the Master Plan shows that Heavy Industrial Area is located within the vicinity of Guwahati Refinery only. The Master Plan further shows that there are no other areas, where Heavy Industries can be set up. But, when one turns to the Zoning Regulations, which, according to the GMDA, regulates the Land Use Zone, prescribed in the Master Plan, what transpires is that under the Zoning Regulations, the industrial zone has been classified into three categories, which are as under:
(a) Light Industry;
(b) Medium Industry; and
(c) Obnoxious Industry.

10. What is, now, of utmost importance to note is that in the Zoning Regulations, there is no mention of Heavy Industry and, similarly, in the Master Plan, there is no mention of Obnoxious Industry. There is no notification or order issued by the GMDA reconciling this discrepancy. It may be noted that Ms. M Hazarika, learned Senior counsel, appearing on behalf of the GMDA, has submitted that Obnoxious Industry would mean Heavy Industry. However, there is nothing in the Master Plan and/or Zoning Regulations indicating that the category of obnoxious industries, which the Zoning Regulations speak of, is same as the Heavy Industry and is not permissible to be set up, under the Master Plan, within the Light Industrial Area. The submission, so made on behalf of the GMDA, can be examined from yet another angle.

11. Clause 13.2.17 (iii) of the Zoning Regulations defines Industry, Light as industries, which do not emit excessive smoke, noise, offensive odour or harmful wastes, employ not more than 100 workers and use power of not more than 100 HP except in the case of foundries and smithies, which do not consume solid fuel.

12. Clause 13.2.17 (iv) defines the term Industry, Medium as industries, which employ more than 100 workers and may use any kind of motive power or fuel, subject, of course, to noxious features. The factories, which are classified as Heavy Industries under the Factories Act, 1948, do not come under this category.

13. Clause 13.2.17 (vi) defines the term Industry, Obnoxious as industries, which are associated with such features as excessive smoke, noise, vibration, stench, unpleasant and injurious flame, effluent explosives, inflammable industries, etc and such other industries, which are hazardous to health and safety of the community.

14. A conjoint reading of the definitions of the Light, Medium and Obnoxious Industry, contained in the Zoning Regulations, shows that as per the Zoning Reg

ulations, industries have been classified into three categories, namely, Light, Medium and Obnoxious, on the basis of the level of emission of smoke, noise, offensive odour or harmful wastes, etc. The Gwuahati Metropolitan Development Authority has, admittedly, no means or power, under the Guwahati Metropolitan Development Authority Act, 1985, to measure whether an industrial unit is within the permissible limit of smoke, odour, noise, vibrations, etc. The petitioners have, therefore, substantial force, when they submit that these aspects of the matter can only be regulated by the Pollution Control Board, which has the power and also means to do so. This apart, if an industry emits smoke, odour, noise, etc, within the permissible limit as fixed by the Pollution Control Board and if such an industry employs less than 100 persons and uses less than 100 HP, as per definition of Light Industry contained in the Zoning Regulations, such an industry would fall within the ambit of Light Industry and such a Light Industry can be set up within the Light Industrial Area as mentioned in the Master Plan.

15. The coke industries, which the petitioners propose to set up, were given, though provisionally, No Objection Certificates, by the APCB. So long as these No Objection Certificates subsist and until the GMDA can show that there would be emission of excessive smoke, noise, etc, a Coke Industry cannot be treated as medium or obnoxious industry and has to be construed as a Light Industry and in such circumstances, the GMDA has no option, but to allow such an industry to be set up within the Light Industrial Area.

16. I may also pause here to point out that the coke industries, sought to be set up by the petitioners, are yet to be commissioned and if the industries, even if allowed to be set up, do not comply with the standards prescribed by the Pollution Control Board, the said industries would be violating the Master Plan and the Zonal Regulations and they can be very well stopped under the provisions of the GMDA Act. The license, as granted by the Chief Inspector of Factories, Assam, indicates that the petitioners' industries have been shown as occupier for 50 workers and 100 HP for the period ending on 31.12.05. This shows that the industries, sought to be set up, would employ less than 100 workers and would not use more than 100 HP. When so construed, it becomes transparent that the petitioners' industries would fall within the ambit of light industries and such industries can be stopped from being commissioned only if they emit or are shown to be emitting excessive smoke, noise, vibration, effluent etc., for, in such circumstances, the industries would not be considered as light industry.

17. Besides what have been indicated above, what needs to be noted is that Clause 13.7.2.4. of the Zoning Regulations reads as under:-

13.7.2.4. REGULATIONS FOR LIGHT INDUSTRY ZONE:

A. Uses permitted - All types of industries that are permitted in residential zone.

(a) Warehouses and godowns.

(b) Coal, wood and timber yards:

(c)	***	***	***
(d)	***	***	***
(e)	***	***	***
(f)	***	***	***
(g)	***	***	***
(h)	***	***	***
(i)	***	***	***
(j)	***	***	***
(k)	***	***	***
(l)	***	***	***
(m)	***	***	***
(n)	***	***	***
(o)	***	***	***
(p)	***	***	***

(q) *** *** ***
(r) *** *** ***
13.7.2.4.B. Uses permissible on appeal to the Authority -
(a) *** *** ***
(h) All other light industries as defined by the Authority not involving any danger for fire, explosion, noise, vibration, smoke, dust, odour, heat or other objectionable effluents .

18. Referring to Clause (b) of Regulation 13.7.2.4., Ms. Hazarika has submitted that this clause permits only staking of coal in a coal yard. This submission has been seriously resisted by Mr. N Dutta, learned Senior counsel, appearing on behalf of the writ petitioners. If the construction of Clause (b) is minutely analyzed, it clearly follows that the word 'timber yard', which appears in Clause (b), is different from the word 'wood'. Unlike the word 'timber yard', the word 'wood' cannot be interpreted as 'wood yard'. While 'timber yard' would be a place, where timber is staked, the use of the word 'wood', in the said Clause, would mean an industry, which is associated with wood and which does not emit excessive smoke, odour, noise, vibrations, etc. Similarly, when the Zoning Regulations use the word 'coal', it is not possible to read the word 'coal' as 'coal yard' and it would obviously mean an industry associated with coal and can, therefore, be allowed to survive even in a residential area so long as such an industry does not emit excessive smoke, noise, harmful gas etc. and employs not more than 100 workers and uses power of not more than 100 HP. Considered from this angle, it cannot be held that the word coal , appearing in Clause (b), would not mean an industry relating to coal.

19. What emerges from the above discussion is that in the face of the scheme of Zoning Regulations and also the Master Plan, unless it can be shown that an industry emits excessive smoke, noise, vibration, effluent, etc., such an industry cannot be regarded as an industry, which cannot be set up in a Light Industrial Area. There is, therefore, no force in the submission of the GMDA that setting up of coke industry, within the Light Industrial area, is prohibited under the Master Plan and under the Zoning Regulations. On the basis of the fact, therefore, that the coke industry does not fall within the ambit of Light Industry, the permission for sale of the land cannot be refused.

20. Let me, now, turn to the ground that since the industries, which the petitioners intend to set up, are located within the vicinity of an airport, the petitioners are required to obtain prior permission from the Airport Authority of India Limited before applying for permission from GMDA for construction of building. In support of this ground, the GMDA has placed reliance on a communication, dated 10-05-2005, addressed to the Chief Executive Officer, GMDA, issued by the DGM (ATE), of the Airport Authority of India Limited. What the communication, dated 10-05-2005, aforementioned, conveys is that as per the Indian Airport Authority Act, 1934, particularly, Section 9(A) thereof, and the Government of India's Notification No. SO 988, construction of building or other structure within a radius of 20 kilometers from airport is restricted and that any person/agent constructing a building within the said distance is required to obtain 'No Objection Certificate' from the Airport Authority of India Limited. The writ petitioners challenge the communication, dated 10-05-2005, as a communication without jurisdiction and without the authority of law. A close scrutiny, therefore, of the Indian Airport Authority Act, 1934, and the Government of India's Notification No. SO 988 aforementioned is necessary.

21. A careful perusal of the Government of India's Notification No. SO 988 shows that Indian Airport Authority Act, 1934, does not impose any blanket ban on construction activities within a radius of 20 kilometers. This apart, the Airport (Demolition of Constructions Against all Buildings and Trees etc.) Rules, 1994, show that it is only the Director General of Civil Aviation, who can, in exercise of the power vested in him under the said Rules and also in terms

of the notification issued by the Central Government, under Section 9(A), direct that a building, which has exceeded the permissible limit to which a building can be raised, cannot be allowed.

22. Coupled with the above, it is worth noticing that by contending that No Objection Certificate needs to be obtained for the purpose of raising any building, the GMDA relies, in fact, on Clause 37(A)(f) of the Building Bye Laws of the Guwahati Municipal Corporation (in short, 'the GMC'), for, it is Clause 37(A)(f) of the said Bye Laws, which lays down that for raising a building in the vicinity of the aerodromes, the maximum height of such buildings shall be subject to conformity with the height limitations prescribed by the Civil Aviation Authorities from time to time and to this effect, a No Objection Certificate, issued by that authority, shall be submitted by the applicant alongwith plans to the sanctioning authority.

23. It is clear from a bare reading of Clause 37 (A)(f) that this is a provision pertaining to the Building laws of the GMC and the GMDA cannot refuse permission by taking recourse to the Building laws of the GMC, for, it is the GMC, which is the authority to enforce its Building Bye laws. Moreover, since the area, where the petitioners seek to set up their industries, is outside the GMC area, GMC Bye laws cannot be applied to such construction works.

24. Turning to the submissions of the GMDA that the petitioners had constructed a brick manufacturing unit and have also raised some constructions without proper sanction, suffice it to point out here that so long as these assertions remain mere allegations, these assertions cannot be made a ground by the GMDA to refuse permission for sale or construction, which the petitioners have sought for. If the petitioners have raised any construction or have established any brick manufacturing unit without authority of law, proper action has to be taken in accordance with law. The GMDA cannot, without conducting proper inquiry, which allows the petitioners to submit their case, refuse permission to set up coke industries on allegations that the petitioners have constructed brick manufacturing unit and have raised other constructions without sanction. There is, admittedly, no inquiry conducted, in this regard, by the GMDA and, hence, refusal of permission for sale or construction, on such a ground, cannot be sustained.

C. WP(C) No. 142/2005 & WP(C) No. 145/2005

(a) By these two writ petitions, the writ petitioners, namely, M/s Ganesh Met Coke Industries and M/s Shri Balaji Coke Industries, have impugned two hand-written letters, dated 13.12.2005, and also the subsequent copy of the same letter, dated 13.12.2005, issued by the Chairman, APCB, whereby the petitioners have been directed to, immediately, stop all constructional activities in public interest until further order and the petitioners were also informed that an Environment Impact Assessment would, in the meanwhile, be made.

(b) I have also indicated hereinabove that the petitioners, in these two writ petitions, contend that the Chairman, APCB, has no jurisdiction to issue such communication on his own inasmuch as the APCB is a statutory body and any such directions, stopping construction, can, at best, be issued by the statutory authority and not on the whims of its Chairman. It is also the case of the writ petitioners that the APCB, having granted 'No Objection Certificate', though provisional, cannot unilaterally direct the petitioners to stop all constructional activities inasmuch as the role of the APCB would, now, re-commence, when the industry is required to be commissioned. When 'No Objection Certificate' has been provisionally granted, the construction, contend the petitioners, cannot be stopped without giving them any opportunity to have their say in the matter.

(c) The Chairman, APCB, has not filed any affidavit personally, but affidavit has been filed on his behalf and also on behalf of the APCB by Deputy Analyst of the Pollution Control Board. This affidavit, nowhere, asserts that t

he Chairman has the authority or power to take any action or pass any order independent of the APCB. This affidavit also, nowhere, asserts that the decision to direct the two writ petitioners to stop further constructional activities was taken by the APCB. In the absence of anything indicating that the Chairman, APCB, has the power or authority to stop, on his own motion, construction of a building of an industry, to which the APCB has itself issued 'No Objection Certificate', though provisional, this Court has no option, but to hold that the impugned letters, issued by the Chairman, APCB, were not in accordance with law.

(d) Coupled with the above, what becomes abundantly clear from the affidavits, filed on behalf of the APCB and its Chairman, is that the Chairman's letter, dated 13.12.2005, aforementioned was based on the fact that there was a public resentment, involving the local residents, over the setting up of these two industrial units. It needs to be noted that a statutory authority is different from an elected or nominated or representative body. A statutory authority operates and functions within the provisions and scheme of the enactment, whereunder such a body or authority is constituted. The action of the statutory authority cannot be dependent on the mood or opinion of the people of a particular locality. So long as an action or a decision of a statutory authority is in conformity with the enactment, whereunder it has been constituted, and in accordance with law, it is the bounden duty of the statutory authority to stand by, and protect, its action or decision. This is not to say that the statutory authority is not required to take public interest into account; but a statutory authority is not an authority, which is elected/nominated at the will of the people, and is, therefore, bound to carry out nothing but its statutory duty using its statutory power. It cannot act beyond its statutory power or beyond its statutory duties merely because of public resentment or else, rule of law would cease to exist. Therefore, merely because of the reason that the residents of a locality have objection to setting up of the coke industries, the Chairman, APCB, cannot (as has been done in the present case), issue a letter, entirely depending upon the will of the people of the locality concerned, stopping all the constructional activities of the proposed industries.

(e) It is also worth noticing that the letters, dated 13.12.05, aforementioned stated that an Environment Impact Assessment (in short, 'E.I.A.') would be made. There is nothing in these letters to indicate that any direction was given to the writ petitioners to get any E.